



Memorandum

To : Mr. Verne Walton

Date : April 6, 1988

From : *Barbara G. Elbrecht*
Barbara G. Elbrecht

Subject: Change in Ownership - Partition

This is in response to your memorandum of February 23, 1988, to Mr. Richard Ochsner in which you ask that we review for change in ownership purposes a series of documents transferring certain real property in Marin County. The documents provided by the Marin County Assessor are as follows:

1. A grant deed dated August 22, 1985, in which J. and E. grant to George a married man, as to an undivided 93 percent interest, and to Herb and Rosemarie husband and wife, as community property, as to an undivided 7 percent interest, certain real property described as Lots 59 through 115 inclusive, H. Park, Unit 2.

2. A grant deed dated August 22, 1985, in which George granted to Marco certain real property described on an attachment not provided to us. From the other facts provided, it appears that George granted to Marco his undivided 93 percent interest in H. Park, Unit 2.

3. An unrecorded undated agreement entered into and effective as of August 23, 1985, which recites, among other things:

a. The agreement is between Marco ("Marco"), Herbert and Rosemarie ("Herb"), George ("George"), Anthony ("Tony") and Gene ("Gene").

b. H. Park II is a 57-unit apartment complex.

c. Marco is buying 53 units, a 93 percent fractional interest in H. Park II.

d. Herb is buying 4 units, a 7 percent fractional interest in H. Park II.

e. Herb's interest is not encumbered by nor subject to the Deed of Trust, despite the language of the Deed of Trust.

2/0 Co-owners

f. Herb's interest in H. Park II is that of a tenant in common, and not that of a partner or joint venturer with the other parties. Herb has no interest in the other parties' ownership interests in H. Park II.

g. As a matter of convenience, the parties may agree to operate their respective interests in H. Park II in common with each party paying his proportional share of the expense.

h. When approval is received from the California Department of Real Estate to convert the apartment units into condominiums, the tenancy in common shall terminate and each party shall receive separate deeds to the units owned.

4. A quitclaim deed dated December 26, 1985, in which Marco quitclaims his interest in lots 59 through 115, H. Park Unit 2 to Marco Properties, a general partnership.

5. A quitclaim deed dated November 25, 1986, in which Marco Properties quitclaims to Herb its interest in lots 72, 73, 74 and 75 of H. Park, Unit 2.

6. A quitclaim deed dated November 25, 1986, in which Herb quitclaims to Marco Properties their interest in lots 59 through 115, H. Park, Unit 2.

7. A letter from Herb dated July 23, 1987, setting forth his reasons why the execution of the quitclaim deeds did not result in a change in ownership.

Herb's
Although the deeds creating t interest in H. Park, Unit 2 states that they acquired an undivided seven percent interest in lots 59 through 115 inclusive, the taxpayers claim this is not true. They assert that they specifically purchased parcels 160-601-14, 15, 16 and 17 (Lots 72, 73, 74 and 75). They argue that since the Agreement Concerning Tenancy in Common states that they are buying "4 units, a 7% fractional interest in H. Park II," they were the sole owners of the subject lots. Therefore, they argue, the quitclaim deeds were executed to "clear any cloud on our title and did not represent a change in ownership or exchange in value."

Marco
The County viewed all 57 parcels as owned by Properties as to an undivided 93 percent interest and by Herb as to an undivided seven percent interest. Based on the quitclaim deeds, they reappraised seven percent of the

interest in the 53 units owned by ^{Marco} Properties and 93 percent of the interest in the four units owned by ^{Herb}.

ANALYSIS

Property tax Ruled 462(k)(2) deals with deed presumptions and states:

Deed presumption. When more than one person's name appears on a deed, there is a rebuttable presumption that all persons listed on the deed have ownership interests in property. When the presumption is not rebutted, any transfer between the parties will be a change in ownership. In overcoming this presumption, consideration may be given to, but not limited to, the following factors:

(A) The existence of a written document executed prior to or at the time of the conveyance in which all parties agree that one or more of the parties do not have equitable ownership interests.

(B) The monetary contribution of each party. The best evidence of the existence of such factors shall be a judicial finding or order. Proof may also be made by declarations under penalty of perjury (or affidavits) accompanied by such written evidence as may reasonably be available, such as written agreements, cancelled checks, insurance policies, and tax returns.

Section 662 of the Evidence Code states that:

The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof.

Clear and convincing proof is defined as

"clear, explicit and unequivocal", "so clear as to leave no doubt," and "sufficiently strong to command the unhesitating assent of every reasonable mind." (1 Witkin, Calif. Evid. (3d ed. 1986) § 160, p. 137)

Under these legal principles, the language used on the deed is presumed to reflect the ownership interests taken by that deed. This presumption can be overcome only by proof that is clear and convincing; that is, evidence that is explicit, unequivocal and leaves no doubt.

The sole evidence presented that contraverts the language of the deed is the undated, unrecorded agreement between the owners described above. No independent documentation, such as insurance policies, deeds of trust, or contracts of sale have been presented to show separate ownership of these four lots. Therefore, it is our opinion that the clear and convincing evidence needed to rebut the presumption that ^{Herb} took an undivided seven percent interest has not been provided.

However, this conclusion does not automatically indicate that a change in ownership occurred as a result of the execution of the quitclaim deeds.

Section 62 of the Revenue and Taxation Code states that a change in ownership shall not include:

(a)(1) Any transfer between co-owners which results in a change in the method of holding title to the real property transferred without changing the proportional interests of the co-owners in that real property, such as a partition of a tenancy in common.

Letter to Assessors No. 80/84, dated May 16, 1980, states that "[a] partition is a division of property giving separate title to those who previously held undivided interests." That letter further states the application of the principles contained in Revenue and Taxation Code section 62(a)(1) concerning partition is relatively simple when only a single parcel is being split. However, when a partition involves more than one property or parcel its application becomes more complex.

Although there are no statutory limitations placed upon the location or extent of the property involved in the transfer, it is our position that Section [62(a)(1)] should be applied separately to each appraisal unit. For example, the splitting of a farm containing ten parcels would not be a change in ownership if proportional interests remained the same. However, the splitting of jointly held interests in two separate and distinct properties would require the comparison of the proportional interests held before and after the transfer in each separate property.

Historically, assessors value property on the basis of the "appraisal unit." That unit is defined in Assessors' Handbook Section 501 as the "unit most likely to be sold as indicated by an analysis of market data." We feel that using the "appraisal unit" basis in regard to Section [62(a)(1)] transfer is not only consistent with appraisal

practice but also the most practical approach from an administrative standpoint.

The county has stated that "the real question is whether the 57 lots plus the common area was one appraisal unit or separate appraisal units," and is asking us for our answer to that question.

The determination of what constitutes an appraisal unit is a decision normally made by the appraiser, based on the appraiser's knowledge of what is commonly bought and sold in the market place. However, in this instance, there is legal authority which may help answer the question presented.

In County of Los Angeles v. Hartford Acc. & Indem. Co. (1970) 3 Cal.App.3d 809 [83 Cal.Rptr. 740], the court explained that a condominium project, like a normal subdivision, is assessed as a single parcel to the record owner for the year in which the subdivision tract map is filed. Unlike a normal subdivision, however, separate assessment of individual units in the ensuing years is not automatic, but occurs only after the conveyance of at least one condominium unit. If no units are ever sold, the entire condominium project will continue to be assessed as a single parcel. Thus, this case permits a condominium project to be treated as a single appraisal unit before the individual condo units are sold.

Herb's Park II was an apartment complex, a single appraisal unit. When the requisite approval for conversion into condominiums was received by the owners, the parties executed the quitclaim deeds to grant Herb separate title to the property in which they had held an undivided interest. If this transfer occurred before the sale of a condo unit, the appraiser may view the complex as a single appraisal unit in accordance with County of Los Angeles v. Hartford Acc. & Indem. Co. If the appraiser makes this determination, the transfer could be considered a partition of an undivided interest following the guidelines of the LTA NO. 80/84. If, however, individual condo units had been sold before the transfer, the condo units themselves would apparently become the single appraisal units. In that case, the transfers could not be considered a partition.

I trust that the above information is helpful to you. If I can be of any further assistance, please do not hesitate to contact me.

BGE/rz

cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson

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